IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2639 OF 2005

Altaf Ismail Sheikh ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. S.V. Kotwal for the Applicant.
Mr. A.S. Gadkari A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATED : JULY 08, 2005.

P.C.:

1. This Application was heard on the last date and today it is kept for dictation of the order. This is an Application for grant of Bail by the Applicant who is an accused in a case which is popularly known as M.P.S.C. Scam Case. The offence is registered under sections 409, 418, 420, 465, 467, 468, 471, 474, 477(a), 380, 381, 457 read with sections 120-B, 201, 34 of the Indian Penal Code read with section 13(i)(d) of the P.C. Act, 1988 read with section 109 of the Indian Penal Code read with sections 5, 7 and 8 of Maharashtra Prevention of Malpractices at Universities, Board and other Specified Examinations Act, 1982. The Applicant was arrested in connection with the said offence on 9th July, 2004. The Bail is prayed by the Applicant mainly on the ground of parity. The Applicant is relying on the orders passed by the Apex Court in case of Pandharinath D. Wani and

Dr. Shashikant Dattatraya Karnik. Reliance is also placed on the order passed by the learned Single Judge of this Court in the case of a co-accused Sanjay Gangadhar Patil. The Applicant has also pressed into service the order dated 1st March, 2005 passed by the learned Special Judge in case of co-accused Gulab Sahadu Patil.

2. The learned Advocate for the Applicant submitted that though the Applicant may not have completed period of two years and more in the custody, the learned Special Judge has enlarged on bail a co-accused by considering the claim based on parity. He pointed out that the said co-accused Gulab Sahadu Patil was given benefit of parity by the learned Special Judge though he was in custody only for about twelve months. He submitted that if the key conspirators are enlarged on bail by the Apex Court, there is no reason why benefit should be denied to the Applicant.

3. The learned A.P.P. Shri. Gadkari has invited my attention to the averments made in the affidavit in reply. He pointed out that there are three other offences registered against the Applicant which are referred to in clause No.(ii) of paragraph No.4 of

affidavit in reply. He submitted that after he was enlarged on bail in the said three cases, he committed the offence in question. He submitted that another crime is registered against the Applicant vide C.R.No.06 of 2005. He also submitted that one of the co-accused Avinash has been denied bail by this Court. He submitted that though the case of the Applicant may be otherwise at par with the other co-accused who are enlarged on bail, the factors which are set out in the affidavit are peculiar in so far as the Applicant is concerned. He did not dispute that co-accused Sanjay Patil who is ordered to be enlarged on bail by this Court is also shown as an accused in the four other cases which are registered against the Applicant which are referred to in the affidavit in reply.

4. Before considering the submissions of the Counsel appearing for the parties, it will be necessary to refer to reasons given by the learned Special Judge in his order dated 24th January, 2005 by which he rejected the application for bail filed by the Applicant. In paragraph No.7 of the order, he observed that submissions made by the prosecution on the basis of pendency of other criminal cases against the Applicant needs no consideration since the said issue was already raised before this court while

considering the bail application of Sanjay Patil and therefore, the pendency of the cases will not be a ground to refuse bail of the Applicant. The only relevant ground which is set out by the learned Special Judge is that the Applicant at the relevant time was in custody only for a period of six months. The learned Judge proceeded to observe thus:

> In the circumstances though said cannot be the ground to refuse bail, admittedly since Applicant is in custody for a period of six months only since arrested on 09.07.2004, I find no point in allowing this application on the ground of parity as observed by the Honourable Apex Court of possible length of time to conclude the trial etc., would come into play only when the custody of accused is of or about two years. Since Applicant as above is in custody for a period of six months only, no case is made out for grant of bail to accused as his case cannot said to be in equal footing with that of case of accused who are enlarged on bail, thus the case is made out for grant of bail on parity.

5. It will be necessary to refer to the decision of the Apex Court in the case of co-accused Pandharinath D. Wani. The Apex Court ordered the said Pandharinath D. Wani to be enlarged on bail on the following ground:

> . He was arrested on 6th October,

> 2002. He has already completed more than two years in Jail. There is no likelihood of the trial being concluded for a considerable length of time. We are given to understand that 1211 witneses have been cited by the prosecution for examination.

6. The learned Single Judge of this Court while considering the Application for bail filed by the co-accused Sanjay Patil by the order dated 22nd December, 2004 held that the said accused was placed in similar situation as the said Pandharinath D. Wani. The said Sanjay Patil was also in custody for more than two years. While enlarging the said Sanjay Patil on bail, the learned Single Judge rejected the contention of the prosecution which is based on the other cases registered against the co-accused Sanjay Patil. As stated earlier, the Applicant is also involved in the same four cases. A reference will have to be made to the order dated 1st March, 2005 passed by the learned Special Judge in the bail application of Gulab Sahadu Patil. The said co-accused was in custody for twelve months. He applied for bail before the learned Special Judge claiming parity on the basis of order passed by the Apex Court in the case of Pandharinath D. Wani and in this court in the case of Sanjay Patil. The learned Special Judge while allowing the application observed that though the said Applicant was in custody for

twelve months only, rest of the case was similar to the case of the co-accused and therefore, considering the fact that the trial is likely to take long time, the learned Special Judge enlarged the said accused on bail.

7. In my view the case of the Applicant herein is on par with the case of Gulab Patil as now the Applicant has completed one year in custody. This Court rejected the Application for bail in case of another co-accused Avinash on a totally different ground which is peculiar to the said accused and therefore, the prosecution cannot place reliance on the said decision of this Court. Hence, a case is made out for enlarging the applicant on bail on the ground of parity.

8. Hence, I pass the following order:

: O R D E R :

i) The Applicant shall be enlarged on bail in connection with C.R.No.33 of 2002 registered with Anti-corruption Bureau, Mumbai, subject to furnishing a personal bond of Rs.5,00,000/- with one or two local

sureties in the like amount.

ii) That, the Applicant shall surrender his passport to Anti Corruption Bureau (ACB) Mumbai. If the passport has already been surrendered, then the same shall remain with the A.C.B. He should also file a statement before the Special Judge, Mumbai, indicating that he has surrendered the passport.

iii) The Applicant shall execute the bail bonds of Rs.5 Lakh with two sureties for the like amount to the satisfaction of the learned Special Judge, Mumbai.

iv) The Applicant proposes to stay at Mumbai. He is directed to report to the A.C.B., Mumbai once in two weeks for a period of six months preferably on alternate Saturday. Thereafter, once in a month, i.e. on every first Saturday of the month till the trial is over.

v) The Applicant shall submit the details of his residential address, telephone numbers (land line as well as mobile), e-mail address, if any, to the A.C.B.Mumbai, within a period of two weeks from the date of his release from the custody.

vi) The Applicant shall not leave the territory of Mumbai without taking prior permission from the Special Judge, Mumbai. He shall also furnish his tour programme as well as his contact number and address to the A.C.B., Mumbai.

vii) The Applicant shall not tamper with the evidence or get in touch with any of the prosecution witnesses.

viii) The Applicant shall co-operate with the prosecution.

JUDGE